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Administrative and budgetary aspects of the financing of the United Nations peace-keeping operations: financing of the United Nations peace-keeping operations

Death and disability benefits

Report of the Secretary-General

Summary

The present report is submitted pursuant to paragraphs 2 and 3 of General Assembly resolution 50/223 of 11 April 1996, in which the Assembly requested the Secretary-General to examine the possibility of an insurance scheme to cover all troops, on the basis of a request for proposals from the global insurance market, and to present the results by 15 July 1996. The Assembly also requested the Secretary-General to respond to issues raised in the report of the Advisory Committee on Administrative and Budgetary Questions (A/50/684), namely the precise legal status of contingent personnel and the legal implications of requiring a soldier without direct contractual arrangements with the United Nations to designate a beneficiary upon arrival in the mission area and of providing for payments directly to individuals.

Following the adoption of resolution 50/223, a marketing effort to secure proposals from 15 insurance concerns worldwide was undertaken and the advice of the Office of Legal Affairs was sought regarding the issues raised in paragraph 19 of the report of the Advisory Committee. The results of the market survey and the opinion of the Office of Legal Affairs are contained in the present report.

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I. Introduction

1. In section III of its resolution 49/233 A of 23 December 1994, the General Assembly requested the Secretary-General to submit concrete proposals on possible revisions to the current compensation arrangements for death and disability based on the principles of:

   (a) Equal treatment of Member States;

   (b) Compensation to the beneficiary that is not lower than reimbursement by the United Nations;

   (c) Simplification of administrative arrangements to the extent possible;

   (d) Speedy settlement of claims for death and disability.

2. The Secretary-General submitted a report on 2 June 1995 (A/49/906 and Corr.1) in response to the above resolution, which provided information on six options. Following its review of that report, the Advisory Committee identified issues on which the General Assembly needed to provide further guidance, including whether an insurance scheme should be established. The Advisory Committee also indicated that an understanding and agreement on the precise legal status of contingent personnel and of the nature of their legal, administrative and operational relationship with the Organization and their Government was a necessary prerequisite.

3. In its resolution 50/223 of 11 April 1996, the General Assembly subsequently requested the Secretary-General to examine the possibility of an insurance scheme to cover all troops and to respond to the issues raised in the report of the Advisory Committee. Information on the request for proposals from the global insurance market for the purpose of establishing an insurance scheme is contained in section II of the present report and the opinion of the Office of Legal Affairs concerning the legal status of contingent personnel and their relationship with the United Nations and their Government is contained in section III.

II. Proposal to establish an insurance scheme to cover all troops

4. Annex I of the report of the Secretary-General (A/49/906 and Corr.1) included a schedule of compensation awards relating to service-incurred injury or disability similar in structure to the schedule of awards set out in appendix D to the Staff Rules (ST/SGB/Staff Rules/Appendix D/Rev.1/Amend.1). Pursuant to the request of the General Assembly, the Secretary-General developed specifications for a proposed accidental death and disability insurance scheme for troops, comprising the following key elements:

   (a) A schedule of awards as set out in annex I to the report of the Secretary-General (A/49/906 and Corr.1);

   (b) Proposals should include, as a second option, a service-incurred death benefit (principal sum or base amount) of $100,000;

   (c) The policy should provide coverage in a fixed amount of $5,000 for funeral and transportation (repatriation) expenses in the event of death;

   (d) Proposals should be costed on a per troop/per month basis and make provision for periodic variation in troop strength;

   (e) Proposals should provide for a five-year time-frame from the date of occurrence during which a documented claim would be receivable;

   (f) In addition, the United Nations sought liberal terms with respect to aggregate loss limits, preferably no aggregate limit, per occurrence or per policy period.

5. Three international brokerage firms, each with substantial United Nations insurance experience and with the necessary expertise in the particular field of insurance concerned, were invited to participate in the exercise of securing proposals from global insurance markets. The brokerage firms concerned are located

in the United States of America (with a subsidiary office in London), the Netherlands and Belgium. At the outset, each brokerage firm was informed that, regardless of the outcome of the marketing exercise, no award could be made unless and until the General Assembly took a decision on the matter. The three firms were asked to submit to the Secretariat a listing of the insurance companies and syndicates from which they proposed to solicit proposals. The listing was required to reflect the order of preference attached by each broker to each of the potential carriers. The brokers were informed that the United Nations would assign up to five insurance carriers to each broker. This procedure, an essential component of broker competition, is necessary to ensure an orderly marketing by avoiding the possibility that a potential insurer may be approached in the name of the United Nations by more than one broker. As a result of this process, the marketing effort to secure proposals for an accidental death and disability policy for peace-keeping troops focused on the 15 insurance concerns worldwide deemed to have the capacity and potential interest in providing the required coverage.

6. The deadline for the submission of proposals by the brokerage firms was 28 June 1996. By that date, four competitive proposals had been submitted. One broker submitted two proposals while the other two brokers submitted one each. One of the proposals submitted indicated that the offer would only be open for 90 days, so it would be unlikely that this proposal would still be valid at such time as the General Assembly might conclude its consideration of the issue. The other three proposals substantially meet the specifications established for the coverage, ranging in cost from about $25 per troop/per month to about $40 per troop/per month for coverage in the base amount of $50,000. In each case, coverage at the principal sum or base amount of $100,000 could be provided at a proportionately higher monthly premium.

7. In reporting the results of action taken pursuant to General Assembly resolution 50/223, the Secretary-General is concerned principally to convey the fact that, as compared with the situation two years ago, it is now evident that the possibility of developing a viable commercial insurance policy to cover accidental death and disability risks for peace-keeping troops has been met with a positive response by a number of insurers in the global market. In large measure, the results that are achievable at the present time reflect the evolution in peace-keeping mandates and, in particular, reflect the perceived reduction in risk level following the winding down of major peace-keeping operations in Cambodia, the former Yugoslavia, Somalia and Mozambique. Further action to pursue this matter by the Secretary-General awaits the guidance of the General Assembly.

III. Legal status of contingent personnel

8. Once the deployment of national contingents in peace-keeping operations is authorized by the Security Council, the contribution of such contingents by Member States to peace-keeping operations is made at the request of the Secretary-General. While assigned to a peace-keeping operation, military personnel of national contingents are an integral part of that operation. Although they remain administratively attached to their respective national army, military personnel are, for the duration of their assignment, international personnel under the authority of the United Nations and subject to the authority of the Force Commander through his chain of command. Like all other members of a peace-keeping operation, they are expected to discharge their functions and regulate their conduct with the interest of the United Nations only in mind. While the Force Commander has general responsibility for the good order and discipline of the operation, responsibility for disciplinary action in national contingents rests with the commander of each of the national contingents.

9. Given the status of military personnel of national contingents in their home country and the fact that they are contributed by their respective Governments, there can be no direct contractual or statutory link between each individual military personnel and the United Nations. The terms and conditions under which they are contributed are agreed to between the United Nations and the Government concerned. Such terms and conditions are set out in the model agreement between the United Nations and Member States contributing personnel and equipment to United Nations peace-keeping operations (A/46/185, annex). The troop-contributing countries thus pay the basic salaries and allowances to all their contingent personnel in

accordance with their own national legislation, subject to reimbursement by the United Nations of standard rates for pay and allowances for contingent personnel.

10. The above-mentioned model agreement also provides for the legal status of military personnel of national contingents, though that status is further elaborated in the model status-of-forces agreement (A/45/594, annex). Under the latter agreement, military personnel enjoy privileges and immunities that include immunity from criminal jurisdiction in respect of any criminal offences that may be committed by them in the mission area. They also enjoy functional immunity and are not, therefore, subject to the civil jurisdiction of local courts or to other legal process in any matter relating to their official duties.

11. In view of the foregoing, it is clear that, while members of national military contingents discharge international functions and serve in United Nations peace-keeping operations under the operational control of the Organization, no direct contractual or statutory relationship exists between them and the United Nations. The terms and conditions of their assignment to the United Nations peace-keeping operations are set out in bilateral agreements and/or understandings entered into between the Organization and their respective Governments.

12. It flows from the above that it would not be legally appropriate for the United Nations to make any form of direct payments to individual contingent personnel. Nor could internal compensation rules of the United Nations apply directly to individual contingent members, who remain under the *in personam* jurisdiction of their respective Governments. Therefore, it appears that the current reimbursement procedure cannot easily be eliminated or substituted by a system of direct payments to disabled troops or dependent survivors.

13. Also, given the lack of a contractual or a statutory link between the United Nations and contingent personnel, it would be difficult for the United Nations to require individual contingent members to nominate beneficiaries upon arrival in the mission area. The beneficiaries of such personnel will necessarily be those who are entitled to such benefits under the applicable national law, a situation which the United Nations could not purport to change without the consent of the Government concerned, which would make the present system of payments even more complex.

IV. Conclusions

14. As indicated in paragraph 7 above, it would now be possible to obtain commercial insurance coverage for contingent personnel assigned to United Nations peace-keeping operations if the Secretary-General were so authorized by the General Assembly. However, in view of the opinion provided by the Office of Legal Affairs, any compensation made for the death or disability of such military personnel could not be paid directly to disabled troops or dependent survivors, but rather to the national authorities, as is the current practice.